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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1107

STATE OF ALABAMA,
JUDSON C. LOCKE, JR., GEORGE C. WALLACE, *et al.*,
Petitioners,

v.

N. H. NEWMAN,
JERRY LEE PUGH, WORLEY JAMES, *et al.*,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI[1]

The Respondents in the above-styled consolidated cases, who together represent all persons confined by the Alabama Board of Corrections or who may be so confined in the future, hereby oppose the petition for a writ of certiorari filed by the petitioners to review a judgment of the United States Court of Appeals for the Fifth Circuit reported as *Newman v. State of Alabama,* 559 F.2d 283 (5th Cir. 1977).

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[1] The respondents herein have filed simultaneously herewith a conditional cross-petition for a writ of certiorari. See *N.H. Newman, et al. v. State of Alabama, et al.*, No. O.T. 77 _____ .

QUESTIONS PRESENTED

1. Should this Court grant certiorari to review the question of whether the Court of Appeals and the District Court abused their discretion in approving and adopting equitable relief necessary to remedy conceded massive constitutional violations in the Alabama Prison system when the record reflected that those violations had continued unabated for years and particularly when the record reflected non-compliance with the District Court's previous order covering some of the same issues?

2. Should this Court grant certiorari to review the question of whether an injunction issued against the State of Alabama and the Alabama Board of Corrections violates the Eleventh Amendment or exceeds a federal court's authority under 42 U.S.C. 1983, when no damages against the State or the Board were sought, when the injunction also was directed to numerous Alabama prison officials including the members of the Alabama Board of Corrections and when the State of Alabama and the Board of Corrections were only named as defendants in one of two consolidated class actions before the Court?

3. Should this Court grant certiorari to review the question of whether the Seventh Amendment required the trial judge to submit two consolidated class actions requesting equitable relief to a jury instead of severing the individual monetary damage claims of one named plaintiff in one of the cases?

STATEMENT OF THE CASE

This case proceeded in the District Court on the basis of two separate complaints by prisoners in the Alabama prison system who sought declaratory and injunctive relief pursuant to 42 U.S.C. 1983 for deprivation of their rights under the Eighth and Fourteenth Amendments.[2] The amended complaint in *James v. Wallace*, C.A. No. 74-203-N, asked for injunctive relief against both specific constitutional violations and the totality of unconstitutional conditions of confinement in the Alabama prison system. The amended complaint in *Pugh v. Locke*, C.A. No. 74-57-N, asked for similar injunctive relief, but also contained an individual request for monetary damages by the named plaintiff Pugh relating to a single assault incident. Each case proceeded as a class action – *James* on behalf of all persons confined by the Alabama Board of Corrections or who might be so confined in the future, and the equitable claims in *Pugh* on behalf of those prisoners who were or might be confined at one of Alabama's prisons, the G.K. Fountain Correctional Center. At the request of Pugh, his individual damage claims were severed from the class claim for declaratory and injunctive relief and the two cases were consolidated for trial.

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[2] The District Court's post-trial findings of fact and conclusions of law included findings and conclusions that its three-year-old order in *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972), *aff'd in part*, 503 F.2d 1320 (5th Cir. 1974), *cert. den.*, 421 U.S. 948 (1975), relating to medical care in the Alabama prison system had not been complied with. (A. 43, 44, 61, 62) (All appendix references are to the appendix in the petition for a writ of certiorari and are designated (A.). Because the same issues were among the issues raised in *James* and *Pugh*, the District Court consolidated the three cases for the purposes of implementing its original order in *Newman*. (A. 69, 70).

The trial of the consolidated cases lasted seven days and included the extensive and virtually uncontradicted testimony of eight nationally known experts in corrections, correctional psychology and public health who testified for the plaintiffs and *amici*.[3] In addition, the court had before it over 450 photographs, numerous depositions and exhibits as well as over 1,000 stipulated facts. The state officials rested their case without presenting any substantial contradictory evidence and "The trial concluded with the admission by defendants' lead counsel, in open court, that the evidence conclusively established aggravated and existing violations of plaintiff's Eighth Amendment rights." (A. 36)

The trial court subsequently entered an order incorporating extensive findings of fact and conclusions of law. The findings and conclusions related to virtually every aspect of the Alabama system and found that confinement under the totality of conditions in the Alabama prison system violated the prisoners' rights under the Eighth and Fourteenth Amendments. The district court found, *inter alia*, that "the four principal institutions are horrendously overcrowded." (A. 37); "that inmates have to sleep on mattresses spread on floors in hallways and next to urinals." (A. 39); that Alabama's prisons "are overrun with roaches, flies, mosquitoes, and other vermin," (A. 40); that "many toilets will not flush and are overflowing," (A. 40); that "some inmates drink from used tin cans," (A. 41); that a public health officer found the four major prisons "wholly unfit for human habitation," (A. 42); that "there is no

[3] The United States Attorney for the Middle District of Alabama participated in the trial as one of two *amici* and the United States, by the Department of Justice, participated as *amicus* in the Court of Appeals.

working classification system in the Alabama penal system," (A. 42); that "robbery, rape, extortion, theft and assault are everyday occurrences among the general inmate population," (A. 45); that "even if the inmate population were reduced to design capacity, the system would still be woefully understaffed," (A. 46); that "the rampant violence and jungle atmosphere existing throughout Alabama's penal institutions are no surprise," (A. 48); that "the indescribable conditions in the isolation cells required immediate action to protect inmates from any further torture by confinement in those cells," (A. 55); and that "these conditions create an environment that not only makes it impossible for inmates to rehabilitate themselves but also makes dehabilitation inevitable" (A. 49). The District Court then issued an injunction to remedy these massive constitutional violations. In addition, in light of the total non-compliance of the defendants with the prior *Newman, supra,* order on medical care and the clear knowledge of the state officials of the unconstitutional conditions which had existed for years, the court appointed a Human Rights Committee to assist it in monitoring future compliance.

The petitioners did not request a stay of the trial court's order but did appeal that order to the Court of Appeals.[4] The petitioners did not challenge and the Court of Appeals expressly approved the District Court's detailed findings concerning the "indefensible conditions" in Alabama's prisons (A. 7). The Court of Appeals did modify a few features of the District Court's order by deciding that they could be replaced by "less intrusive, but equally effective measures" (A. 10). Among the modifications was a directive by the Court of Appeals to the District Court to appoint individual monitors to report on compliance at each

[4] Indeed, many of the changes ordered by the District Court have already been complied with by the Alabama officials.

prison rather than maintaining the Human Rights Committee. The vast majority of the District Court's remedial measures were upheld as being necessary to correct specific constitutional violations and to correct the totality of violations under the Eighth and Fourteenth Amendments. The respondents were granted until April 6, 1978 to file their brief in opposition to the petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I. THE REMEDY ADOPTED BY THE COURT OF APPEALS WAS APPROPRIATE TO CORRECT CONCEDED MASSIVE CONSTITUTIONAL VIOLATIONS.

In determining whether the standards for plenary review by this Court under Rule 19 have been met, it is important at the outset to delineate clearly what is at issue. The petitioners do not challenge and the Court of Appeals approved the detailed and exhaustive findings of the District Court that by any contemporary societal standards, the conditions of confinement in the Alabama prison system were shocking to the conscience of reasonably civilized people and bore no reasonable relationship to any legitimate institutional goals or valid governmental interest.[5] Nor could those findings be challenged in light of the virtually uncontested testimony at trial and the petitioners' admission that the plaintiffs were entitled to relief because of aggravated and wholesale Eighth Amendment violations.

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[5] The barbaric and inhumane conditions in the Alabama prison system as well as Judge Johnson's ordered remedies have already been noted by this Court in *Dothard v. Rawlinson*, 433 U.S. 321, 334, 336, n. 23 (1977).

As the Court of Appeals initially recognized, the only real issue before it was an appraisal of whether the District Court abused its broad discretion in prescribing the appropriate remedies to cure the admitted massive constitutional violations. A District Court is in the best position, having heard all of the evidence, to make the decision on the appropriateness of particular remedies. As the Court of Appeals pointed out in another context, in discussing the decision of the trial judge in this case, "[a] federal district court [is] closer to the situation than we are . . ." *Jackson v. Alabama*, 530 F.2d 1213, 1244, n. 9. (5th Cir. 1976), and its decision should only be overturned in the face of an evident abuse of discretion or clearly erroneous factual findings. Neither of those determinations can be or were made in this case. Similarly, the issue raised in the petition for certiorari is only whether those remedies as modified by the Court of Appeals, are so abusive of their discretion and "so far depart from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." Supreme Court Rule 19(b).

It is well-settled by this Court that once a constitutional violation is found the scope of the remedy is determined by the nature and extent of the constitutional violation; that the remedy can be aimed at eliminating a condition that violates the Constitution or flows from such a violation; and that the court's equitable powers to remedy violations is broad and flexible and must be molded by the necessities of the situation, *Milliken v. Bradley*, 433 U.S. 267 (1977); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *State of Alabama v. United States*, 304 F.2d 583 (5th Cir. 1962), *aff'd*, 371 U.S. 37 (1962).[6]

[footnote 6 on next page]

The need for every aspect of the District Court's order is fully supported by the evidence in the case and the petitioners do not specify any part of the order, as modified by the Court of Appeals, which was not needed to correct the admitted constitutional violations found to exist in the Alabama prison system. This is undoubtedly because in determining the appropriate remedy, the District Court and the Court of Appeals each recognized the discretion normally granted to state officials and were careful to construct relief geared only to correcting the massive constitutional violations. *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

The appointment of monitors to observe actions of the Petitioners and to report to the Court on compliance or non-compliance is the only requirement specifically complained of by the Petitioners. Clearly, it was within the broad equitable powers of the Court to use such monitors as a part of a plan calculated realistically to work in correcting violations. *Milliken, supra,* at 280; *Green v. County School Board of New Kent County*, 391 U.S. 430, 439 (1968). The monitors were particularly necessary in light of the uncontradicted evidence that massive violations of

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6 (continued from previous page)

The attempted reliance of the Petitioners on *Rizzo v. Goode*, 423 U.S. 362 (1976), is misplaced. In that case the plaintiffs were found not to have met requisite Art. III case or controversy standards. Further, the district court was criticized for granting far reaching equitable relief against City of Philadelphia officials based upon 20 police-citizen incidents which apparently occurred without the participation or approval of police officials. Unlike the situation in Alabama, ". . . where the state authorities had implemented the unconstitutional deprivation, the responsible authorities [in Philadelphia] were not found to have played an affirmative part in any unconstitutional deprivations." *Id.* at 377.

the rights of prisoners had existed for years with full knowledge of the petitioners *and* that they had totally failed to comply with a three-year-old order to meet minimal constitutional conditions for medical care. *See, Morgan v. McDonough*, 540 F.2d 527 (1st Cir. 1976), *cert. den., McDonough v. Morgan*, __U.S. __, 97 S. Ct. 743 (1977); *Inmates of Attica Correctional Facility v. Rockefeller*, 453 F.2d 12 (2nd Cir. 1971).

Faced with perhaps the most outrageous and massive Eighth and Fourteenth Amendment violations ever examined by a federal court, the remedy ordered was not only within the equitable powers of the lower court but was constitutionally mandated. *Pell v. Procunier*, 417 U.S. 817, 827 (1974).

II. INJUNCTIVE RELIEF AGAINST THE STATE OF ALABAMA AND THE ALABAMA BOARD OF CORRECTIONS.

Supreme Court Rule 19(1) states that certiorari will only be "granted where there are special and important reasons therefor." The second issue raised by the Petitioners challenges the injunction against the State of Alabama and the Alabama Board of Corrections alleging: (1) each is immune from suit under the Eleventh Amendment; (2) neither is a "person" subject to 42 U.S.C. 1983 jurisdiction; and (3) *Edelman v. Jordan*, 415 U.S. 651 (1974) and *Ex Parte Young*, 209 U.S. 123 (1908) bar judgments against the State for prospective costs of compliance with an order. Under the facts of these cases, the questions presented are not only unimportant but are essentially irrelevant.

First, additional defendants enjoined include all members of the Alabama Board of Corrections and numerous other prison officials who would clearly remain bound by the

injunction issued, *Scheuer v. Rhodes,* 416 U.S. 232 (1974); *Edelman v. Jordan,* 415 U.S. 651 (1974) and have the authority in their official capacity to carry out the court's orders. Second, the State of Alabama and the Board of Corrections were only named defendants in the *Pugh* case and not the *James* case. Therefore, any action taken on this issue in *Pugh* would not affect the same relief granted in *James.* Third, this issue was never thought important enough by counsel for the petitioners to raise, brief or argue in the trial court. Fourth, the Court of Appeals did not see fit to speak to this issue at all. Fifth, whether the State of Alabama and/or the Board of Corrections are enjoined in addition to the members of the Board of Corrections has absolutely no practical effect on what has happened or will happen under the court's order.

III. SEVERANCE OF THE INDIVIDUAL DAMAGES DEMAND OF THE NAMED PLAINTIFF IN *PUGH v. LOCKE.*

The third claim of the petitioners is that these two consolidated class actions should have been tried before a jury and not by the court because of the individual damage claim of the named plaintiff in *Pugh v. Locke.* Under the facts of these cases, there are certainly no special and important reasons for the Court to grant certiorari on this issue. Supreme Court Rule 19(1).

Again, the consolidated case of *James v. Wallace,* which was a system-wide class action, only asked for declaratory and injunctive relief. Therefore, even if the *Pugh* case were to be reversed and sent back to the trial court for all common legal and equitable issues to be tried by a jury, the class action equitable relief granted in the *James* case would still stand.

Moreover, the severance of Pugh's individual damage claim did not deprive the defendants in that case of their right to a jury trial. The issues of fact and law are not common to and do not result in collateral estoppel or *res judicata* to facts or legal issues in Pugh's individual damage claim since that claim arises solely out of an alleged assault upon him in August 1973, after he requested to be transferred for his personal safety. The facts in that case were not presented in the cases tried below. Further, the issues in that case will involve the personal involvement and culpability of each defendant relating to that particular incident. Therefore, the cases of *Curtis v. Loether,* 415 U.S. 189 (1974); *Ross v. Bernhard,* 396 U.S. 531 (1920); *Dairy Queen, Inc. v. Wood,* 369 U.S. 569 (1962); and *Beacon Theatre, Inc. v. Westover,* 359 U.S. 500 (1959), cited by the Petitioners, are totally inapplicable.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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